IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 952 OF 2005

Shri Ramchandra Abaji Pawar & anr. ... Appellants

V/s

Smt. Laxmibai Pawar
(since deceased by L.R.)
Smt. Jijabai Vasantrao Chaven
(since deceased by L.Rs.)
Shivaji Vasantrao Chavan & ors. ... Respondents

Mr. R.S. Apte with A.A. Garge for the appellants.

Mr. Umesh G. Deshpande for Respondents.

CORAM: P.V. KAKADE, J.

DATED: 27TH SEPT., 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Addl. District Judge, Pune, dismissing the appeal and confirming the judgment and order passed by the Civil Judge, J.D., Khed, decreeing the suit for partition between the parties.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiffs filed the suit for partition and separate possession of the suit property which consists of several lands and houses. The genealogy of the family is given in the plaint which also shows that the ancestors of parties were Baburao and Abaji who were sons of one Kaluram Pawar. According to the plaintiffs, all the properties were joint family properties and both the brothers were doing agricultural business jointly. Baburao died prior to 30 years in the joint family. Thereafter Abaji also died in the year 1956. Baburao had no any male issue. His wife and daughter i.e. the plaintiffs are the only heirs of Baburao. Defendants are heirs of Abaji. There was no partition between both brothers in respect of the suit properties. After death of Abaji, defendant No.1 Ramchandra became the manager of the joint family. Both plaintiffs have 1/2 share in the suit property and the defendants have 1/2 share. And as such, when defendants refused to part with the properties, suit came to be filed.

4. Defendants contested the suit inter-alia denying all the allegations and submitted that there was joint family of plaintiffs and defendants till the death of Baburao i.e. till 1950 and at that time, in addition to

the suit properties, there were two block (shops) at Bombay belonging to the joint family and there was also one room at Bombay which was allotted to the share of Abaji. Accordingly, there was document to that effect and since then there exists no joint family. In other words, it is contended by the defendants that there were partitions between the parties and, therefore, the suit was sought to be dismissed.

5. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiffs had proved that they had 1/2 share in the suit property and defendants failed to prove that there were partitions between the parties on 2.5.1950. In view of this position, the suit came to be decreed.

The appeal was carried to the District Court, Pune. The learned District Judge, after hearing both sides came to the conclusion that the findings recorded by the learned Trial Judge were legal and proper and, therefore, dismissed the appeal. Hence the present appeal.

6. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The only question sought to be raised on

behalf of the appellants is regarding so-called admissions given by the plaintiffs to the effect that there were two shops at Bombay in possession of their father but the possession was lost after the death of their father as there was nobody to look after. On the basis of this admission, it was contended that there were partitions between the parties and the suit is not tenable. However, taking into account all these aspects, both the Courts below have rightly considered this aspect holding that this so-called admission does not amount to evidence of partition between the parties in the year 1950. This is especially so when there is absolutely no evidence on record to infer that there was partition between the parties in the year 1950. It was submitted on behalf of the appellants that the said admission is sufficient to show that the Bombay property was given to the share of the plaintiff, however, such inference is not possible and cannot be legally drawn in view of the facts and circumstances. Under the circumstances, I hold that both the Courts below have rightly concluded that there is no evidence to hold that there were partitions. Therefore, the reasoning adopted and findings recorded by both the Courts below leave no doubt whatsoever that the plaintiff is entitled to the decree of partition as passed by the lower Court.

7. The learned advocate for the appellant also sought to raise a issue regarding non-availability of the property for partition on the ground that the plaintiff No.1 was not alive and defendant No.2 is a daughter of Baburao who died long back and admittedly prior to 1956 i.e. prior to Hindu Succession Act, by which daughters were entitled for share in the property of father. Prior to enactment of this Act of 1956 there was no such right to daughters and, as such, the present plaintiff No.2 being the daughter of a father who died prior to 1956 has no right to claim share in the property of the father. However, this argument is discarded by both the Courts below on the ground that deceased plaintiff No.1 who was wife of Baburao acquired a absolute title in the property belonging to her husband and, therefore, after the death of Baburao her name was mutated in the record of right as joint owner and during her life time she became absolute owner of share of her father. Therefore, the point sought to be raised on behalf of the appellant is devoid of any merits.

8. In view of the facts and circumstances, I hold that the appeal has no merits and, therefore, deserves to be dismissed and stands dismissed with no order as to

costs.

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